

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**GREAT RIVER, L.C., RIVER HIGHLANDS
HOMEOWNERS ASSOCIATION, AND
RIVER HIGHLANDS WATER SYSTEM
ASSOCIATION**

LeClaire, Iowa

**ADMINISTRATIVE
ORDER
NO. 2008-WS- 06**

TO: Michael E. Mahler
President and Manager
Great River, L.C.
28041 230th Avenue
LeClaire, IA, 52753

James Eggers
President and Registered Agent
River Highlands Homeowners
Association
23811 284th Avenue
LeClaire, IA, 52753

Steven H. Jacobs
Registered Agent
111 E. 3rd Street
600 Union Arcade Building
Davenport, IA 52801

David Lawson
President and Registered Agent
River Highlands Water System
Association
23835 284th Avenue
LeClaire, Iowa 52753

I. SUMMARY

This administrative order (order) is issued to Great River, L.C. (Great River), River Highlands Home Owners Association (River Highlands), and River Highlands Water System Association. This order is issued due to water supply violations occurring in LeClaire, Iowa. Questions or responses regarding this order shall be directed to:

Relating to technical requirements:

Mark Heiderscheit, Environmental Specialist
IDNR Field Office No. 6
1023 West Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515/281-6267

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building, 502 E.9th Street
Des Moines, Iowa, 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water supply), and the rules promulgated or permits

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The River Highlands Subdivision is located in the NW ¼ of Section 14, T 79N, R5E in Scott County, Iowa. The subdivision consists of approximately 47 lots in three additions in LeClaire, Iowa. Homes have not been constructed on all lots to date. Currently, there are approximately 28 homes constructed and occupied in the subdivision. In December 1994 or January 1995, a well was constructed to serve the River Highlands Subdivision, LeClaire, Iowa. The well now serves River Highlands 1st Addition, River Highlands 2nd Addition, and River Highlands 3rd Addition. Great River was the responsible developer for the well that serves the three subdivisions.

2. Notice of incorporation of Great River was filed with the Iowa Secretary of State on March 29, 1994. Under the articles of incorporation, Michael E. Mahler, 28041 230th Street, LeClaire, Iowa 52753, was designated as a manager and president of the company. On December 22, 1999 Mr. Mahler, as president of the company, filed an affidavit and layout map with the county recorder concerning the location of the water supply system for the River Highlands Subdivision. The map included the location of the water supply system within an easement, including the location of the six inch main line, the 2 inch lines to individual residences, the water hydrants, and the well house. The legal description for the water supply was listed as "River Highlands Second Subdivision, a Subdivision of a part of the NW ¼ of Fractional section 14, Township 79 North, Range 5 East of the 5th Principal Meridian, Scott County, Iowa." This well also serves the other River Highlands additions.

3. On July 27, 1998 articles of incorporation for River Highlands Water System Association were filed with the Iowa Secretary of State. The initial directors and incorporators for this nonprofit corporation were Michael E. Mahler and A. Kristyn Mahler of 28041 230th Street, LeClaire, Iowa 52753. The current registered agent and president is David Lee Lawson, 23835 284th Avenue, LeClaire, Iowa 52753. The purposes for the organization were listed as:

"To manage, administer, maintain, preserve, repair and operate a water system on real property located in the County of Scott, State of Iowa, generally known and described as:

River Highlands Subdivision, a subdivision of a part of the NW ¼ of Fractional Section 14, Township 79 North, Range 5 East of the 5th Principal Meridian, Scott County, Iowa.

(Subject to covenants, conditions, restrictions and easements of record)."

The document also provided that the corporation would have the power to "maintain a water system for the benefit of its members."

4. On July 27, 1998 articles of incorporation were filed with the Iowa Secretary of State for River Highlands Homeowners Association, aka River Highlands Subdivision (River Highlands). The initial directors and incorporators for this nonprofit corporation were Michael E. Mahler and A. Kristyn Mahler of 28041 230th Street, LeClaire, Iowa 52753. The purposes of this nonprofit corporation were listed as:

"To manage, administer, maintain, preserve, repair and operate real property in the County of Scott, State of Iowa, generally known and described as:

River Highlands Subdivision, a Subdivision of a part of the NW ¼ of Fractional Section 14, Township 79 North, Range 5 East of the 5th Principal Meridian, Scott County, Iowa."

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

James Eggers, 23811 284th Avenue, LeClaire, Iowa 52753 is the current president and registered agent of River Highlands.

5. On January 21, 2005, a sanitary survey was conducted at the River Highlands site by Mark Heiderscheid, Environmental Specialist, from the Department's Field Office No. 6 (Field Office). During this inspection, Mr. Heiderscheid discovered that a construction permit had not been obtained from the Department prior to Great River initiating construction of the well and that the facility did not have a water supply operation permit for this public water supply system.

6. The sanitary survey required River Highlands to submit an application for a water supply operation permit and to submit a compliance plan for obtaining a certified operator by February 28, 2005. Additionally, once the compliance plan was submitted, River Highlands was required to determine who the affidavit operator would be and submit four notarized copies to the field office for review. The sanitary survey required River Highlands to obtain all applicable permits prior to any new construction, addition or modification of the system and to submit copies of the invoices from the well contractor and the contractor/plumber who connected the well to the system by February 28, 2005. River Highlands was required to develop a written bacterial sample siting plan and submit a copy of the bacterial siting plan to the Field Office.

7. Following the survey on January 21, 2005, the Field Office sent a Notice of Violation (NOV) to Michael Mahler and River Highlands on January 27, 2005. The NOV informed them of water supply construction standards and water supply construction permit violations. The NOV detailed requirements of the sanitary survey report which was included with the NOV letter. The sanitary survey report required the facility to apply for an as-built construction permit, complete a viability assessment, submit the operation permit application, submit a copy of the well drillers log, and submit a compliance plan for a certified operator.

8. On March 3, 2005, the Field Office sent an NOV letter by certified mail to River Highlands, attention Rod Varilek, president of River Highlands, and Michael Mahler. The NOV informed River Highlands and Mr. Mahler of the requirements to complete a viability assessment, submit the operation permit application, submit a copy of the well driller log and invoices, and submit the operator compliance plan.

9. On March 29, 2005, Joel Johnson, a certified operator, of Johnson H2O Equipment, submitted a response to the sanitary survey completed by the Field Office on January 21, 2005. The response letter was received by the Department on March 30, 2005. This letter informed the Department that Mr. Daryl Enfield, Department Engineer, was contacted on March 3, 2005 with regards to information regarding submission of an as-built construction permit. All information available to River Highlands with regard to the well construction was included with Mr. Johnson's letter. This information included submersible pump specifications, pressure system specifications, and distribution system specifications. The sanitary survey required submittal of the well drillers log to the Field Office. Mr. Johnson informed the Field Office that the well was constructed by Winslow Well Drilling and that company records no longer existed. He verified with the Scott County Health Department that a construction permit was issued but that the drillers log was not submitted to the county. Mr. Johnson informed the Field Office that River Highlands did not have copies of invoices from the well contractor or plumber that connected the well to the system.

10. The March 29, 2005 letter also responded to sanitary survey comments concerning the well structure and deficiencies. The sanitary survey required that River Highlands ensure that the well casing is at least 18 inches above grade or 12 inches above the pump house floor. The response letter stated that the well casing would be lengthened an additional foot by welding additional casing. In response to the comment that drawdown equipment was not observed, the response letter stated that such equipment would be installed the next time the submersible pump was removed for service and repair. The sanitary survey report noted that the inspector could not observe whether there was a check valve for well no. 1. The response letter stated that there

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

was a check valve. The inspector did not observe a flow meter. The response letter stated that a flow meter would be installed. The sanitary survey report required that the well casing meet design standards. The March 29, 2005 letter stated that the casing vent met Department design standards.

Mr. Johnson stated in the March 29, 2005 letter that he discussed the completion of the viability assessment with Mr. Enfield who needed to check on whether it needed to be completed with another Department engineer, Roy Ney. Mr. Johnson stated in the letter that he was not aware of the February 28, 2005, deadline and that he had just received a copy of the sanitary survey on March 23, 2005.

The March 29, 2005 letter informed the Department that Joel H. Johnson, Johnson H2O Equipment, had been hired by River Highlands as a certified operator. The certified operator affidavit forms were mailed to the Field Office on March 8, 2005. The Field Office sent a letter approving the affidavits, which Johnson H2O Equipment received on March 16, 2005.

11. The original permit application was mailed on December 28, 2004 and was due by February 28, 2005. On March 14, 2005 a delinquent public water supply application was mailed to River Highlands and was due by April 30, 2005. The delinquent application signed by Rodney Varilek was received by the Department on April 5, 2005. The water supply operation permit for River Highlands was issued on April 8, 2005.

12. On May 24, 2005, the Department sent Mr. Varilek a letter notifying him of the acceptance of River Highlands as a public water supply system and the need of the facility to complete a viability assessment.

13. On December 7, 2005 a Department Water Supply Engineer sent a letter to Rod Varilek, president of River Highlands, concerning submittal of information to meet the requirements of the January 27, 2005 sanitary survey report. The letter requested as-built plans of the existing distribution system, as-built plans for the well, and as-built plans that included the elevation and plan views for the vault, all piping and the hydropneumatic pressure tanks. A copy of River Highlands' covenants was requested to determine if the necessary provisions were incorporated to maintain proper separation distances between the well and any source of contamination. The Department did not receive a response to that letter.

14. By a letter dated December 29, 2006, a Department Water Supply Engineer sent a letter to Rod Varilek, president of River Highlands. The letter informed River Highlands that the information requested in the December 7, 2005 letter concerning the as-built public water supply system had not been submitted to the Department. A follow-up letter was sent on August 28, 2007 advising that the as-built plans and other required information had not been submitted to the Department.

The Department's August 28, 2007 letter also indicated that this facility needed to submit an engineering report dealing with pressure problems experienced by residents. The letter also advised the facility that the viability assessment has not been approved and that approval is necessary prior to approving any construction permits.

15. On October 1, 2007 Jim Egger, P.E., submitted a fax to the Department with further information concerning River Highlands. This information included a letter to the Scott County Planning Department concerning septic systems near the well house, a copy of a September 27, 2007 letter to the Department, a copy of the engineer's September 17, 2007 letter to Dave Lawson, president of the River Highlands Water Association, concerning a water system analysis, a copy of an amendment to the River Highlands protective covenants and water system agreement, and a copy of the July 27, 2007 amendment to the protective covenants concerning separation distances between the well and private septic systems.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

The water system analysis stated that the current well and pump should be able to meet average daily demands for 47 homes. The analysis went on to state that with lawn sprinklers in operation, water consumption in the dry summer months pushes the daily demand beyond the capacity of the current pump. The analysis stated that this meant the water pressure will drop to dangerously low levels in the distribution pipes. The engineer recommended that lawn sprinklers be eliminated from the distribution system of River Highlands for one year.

16. Daryl Enfield, an engineer from the Department's Water Supply Engineering Section, notified the president of the River Highlands Water System Association on December 26, 2007 of the Department's view of the situation at River Highlands concerning the well and distribution system. Mr. Enfield had contacted the operator for this facility concerning the well pump. The operator informed Mr. Enfield that everything was on hold due to a breakdown in communications with Michael Mahler over shared costs for improvements. Mr. Enfield's communication to Mr. Blake provided in part as follows.

"Your association must take action to correct the pressure deficiencies at your public water supply. I know that all past correspondence has stated that we would need to approve 'as-built' plans and specifications, which you have submitted, then you should submit an application for a construction permit to make any improvements to your water supply. That is our standard procedure for fugitive water supplies that are brought on line as a public water supply."

17. River Highlands submitted a preliminary engineering report for this public water supply system. The report was received by the Department on May 8, 2008 and is under review by the Department's project engineer. Following review of the report by the Department engineer, an approval letter will be issued with comments and recommendations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.183(1) provides as follows:

"It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department.

1. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto..."

Department subrule 567 IAC 43.3(3) requires written construction permits. "No person shall construct, install, or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director..." Department subrule 567 IAC 43.3(3)(d) provides that "[i]t is the responsibility of the public water supply and certified well contractor to ensure that a public well construction permit has been issued by the department prior to initiation of well construction and to ensure that all well construction is performed in accordance with the provisions of this chapter."

The above stated facts show noncompliance with these provisions by Great River. Great River did not apply for and receive a construction permit from the Department prior to construction of the well at issue in this matter.

2. 567 IAC 43.8(2) sets forth the applicability and purpose of the rules regarding a viability assessment. "These rules apply to all new and existing public water supplies." Department subrule 567 IAC 43.8 (5)"a" requires the submission of a system viability assessment. The above stated facts show noncompliance with these provisions.

3. Department subrule 567 IAC 43.2(2) requires that public water supplies obtain a water supply operation permit. The subrule provides that "no person shall operate any public water supply system without, or contrary to any condition of an operation permit issued by the director." This

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

facility operated a public water supply system without an operation permit contrary to this subrule until early 2005.

4. Department subrule 567 IAC 43.1(7) provides that all:

"public water supply systems must have a periodic sanitary survey, conducted by the department or its designee, which is a records review and on-site inspection of the system." "Systems must respond in writing to significant deficiencies outlined in the sanitary survey report within the time period specified in the report...[a]t a maximum, the written response must be received within 45 days of receiving the survey report."

The above stated facts show noncompliance with this provision.

5. Department subrule 567 IAC 81.2(11) states that:

"(w)hen the director allows the owner of a plant or distribution system required to have a certified operator time to obtain an operator, the owner must submit a compliance plan indicating what action will be taken to obtain a certified operator. The plan ...must be submitted within 30 days of the facility owner's receipt of a notice of violation."

The above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the Department hereby orders Great River, River Highlands and River Highlands Water System Association to do the following:

1. Great River, River Highlands, and River Highlands Water System Association agree to hire a well contractor to conduct a pumping test to determine the specific capacity of the well within thirty (30) days of receipt of this order.

At the time of the pumping test, Great River, River Highlands, and River Highlands Water System Association are required to have the well televised to determine the integrity of the well casing. This order requires that the well driller performing the televising use a camera that has a light source behind the lens and is also capable of viewing to the side in order to optimize the information gathered by the televising. It is required that copies of the televised well be sent to 1) Paul Van Dorpe, Iowa Geological Survey, 109 Trowbridge Hall, Iowa City, Iowa 52242-1319, and Daryl Enfield, P.E., Water Supply Engineering Section, Department of Natural Resources, 401 S.W. 7th Street Suite M., Des Moines, Iowa 50309-4611.

Great River, River Highlands and River Highlands Water System Association are required to have the contractor remove and inspect the well pump at the same time as the pumping test and televising to determine any problems or deficiencies. A new pump should be installed if necessary. If it is determined that a new or higher capacity pump is needed, Great River, River Highlands, and River Highlands Water System Association are authorized by this order to install such a pump. While the pump is being removed and inspected, Great River, River Highlands, and River Highlands Water System Association shall attach a check valve, air line and other related appurtenances for the purpose of recording well drawdown. Great River, River Highlands, and River Highlands Water System Association are required to complete the work related to televising the well and inspecting and replacing the well pump and other related items as described in Section V.1. within sixty (60) days of receipt of this order.

2. Within sixty (60) days following approval of the preliminary engineering report (see paragraph 20 of section "III. Statement of Facts"), Great River, River Highlands and River Highland Water

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

System Association are required to submit an application for a construction permit to the Department's Water Supply Engineering Section. The permit application must include the construction permit fee, appropriate schedules, and plans and specifications which address all of the recommendations presented in the engineering report. The construction permit application is required to address all viability issues. The Department will review the submittal and issue a construction permit or ask for additional information before issuing the construction permit. Final review of the viability assessment will be completed and a determination will be issued by the Department concerning viability of this public water supply system.

3. Great River, River Highlands and River Highlands Water System Association are required to complete construction of all improvements for this public water supply by April 30, 2009.

4. In the future prior to making improvements to this public water supply system, Great River, River Highlands and River Highlands Water Association are required to apply for and receive all necessary construction permits from the Department. Great River, River Highlands, and River Highlands Water Association are required to work together to apply for and maintain all necessary water supply operation permits.

5. Great River, River Highlands and River Highlands Water Association are required to retain a properly certified operator for this public water supply facility.

6. Great River is required to pay an administrative penalty of \$6,000.00. The penalty shall be paid to the Department within 60 days of receipt of the order. If Great River appeals this order as outlined in Section VII below, the penalty is not due until the appeal is resolved by a final administrative order, final court order or agreement of the parties.

7. River Highlands and River Highlands Water System Association agree to pay a total administrative penalty of \$4,000.00. The penalty shall be paid to the Department within 60 days of receipt of this order. If River Highlands and River Highlands Water System Association appeal this order as outlined in Section VII below, the penalty is not due until the appeal is resolved by a final administrative order, final court order or agreement of the parties.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for the water supply violations involved in this matter and authorizes referral to the Attorney General for enforcement at the Director's request. More serious criminal sanctions are also available pursuant to that Code provision.

In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties for violations that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of immediate administrative penalties to the parties.

PENALTY ANALYSIS FOR GREAT RIVER

a. **Economic Benefit-** The failure of Great River to apply for a water supply construction permit when the well was originally constructed resulted in cost savings. The failure of Great River to initially apply for a water supply operation permit resulted in cost savings in not expending the money required to apply for a permit and to maintain the records required under a water supply operation permit. Additional cost savings were realized by not performing the required drinking water tests over the years that would have been required had this facility obtained a water supply operation permit when the well was first constructed and began serving River Highlands. The amount of \$1,000.00 is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

b. Gravity of the Violation- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by the water quality statute. Construction of a well prior to obtaining the required construction permit, operation of the water supply without obtaining an operation permit and failure to perform the monitoring and reporting that would have been required pursuant to a water supply operation permit threatens the integrity of the water supply program. The amount of \$2,000.00 is assessed against Great River for multiple violations that included construction of the well without a permit, operation of a public water supply without a permit, failure to do appropriate monitoring and testing.

c. Culpability- Great River, the developer of this housing project, had the obligation to be aware of the legal requirements for obtaining required permits, including water supply construction permits, and water supply operation permits. Once the proper permits were obtained, Great River, the developer, had the duty to comply with the permits as issued and Department rules concerning water supplies. The Department finds that Great River should be assessed a total of \$3,000.00 for the culpability factor due to Great River's failure to get a construction permit to construct the well and for failure to obtain a water supply operation permit and failure to conduct the required monitoring and reporting.

**PENALTY ANALYSIS FOR RIVER HIGHLANDS AND RIVER HIGHLANDS WATER
SYSTEM ASSOCIATION**

a. Economic Benefit- The failure of Great River to initially apply for a water supply operation permit and River Highlands and River Highlands Water System Association to apply for further water supply operation permits when they were organized resulted in cost savings in not expending the money required to apply for a permit and to maintain the records required under a water supply operation permit. Additional cost savings were realized by not performing the required drinking water tests over the years that would have been required had this facility obtained a water supply operation permit when the well was constructed and began serving River Highlands as a public water supply. The amount of cost savings for these items if separately calculated would be substantial. The amount of \$500.00 is assessed for this factor at this time.

b. Gravity of the Violation- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by the water quality statute. Operation of the water supply without an operation permit and failure to perform the monitoring and reporting required for a public water supply system threatens the integrity of the water supply program. The amount of \$2,000.00 is assessed against River Highlands and River Highlands Water System Association for multiple violations that included operation of a public water supply without a permit and for failure to do appropriate monitoring and testing that would have been required pursuant to a water supply operation permit.

c. Culpability- River Highlands and River Highlands Water System Association had the obligation to be aware of the legal requirements for obtaining required permits, including water supply operation permits. Once the proper permit was obtained, River Highlands and River Highlands Water System Association had the duty to comply with the permits as issued and Department rules concerning water supplies. River Highlands and River Highlands Water System Association had the duty to apply for a water supply operation permit and to conduct required monitoring and reporting pursuant to such permits. The Department finds that River Highlands and the River Highlands Water System Association should be assessed a total of \$1,500.00 for the culpability factor due to multiple violations. This amount of \$1,500.00 is assessed for failure to obtain a water supply operation permit, failure to conduct

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

the required monitoring and reporting, failure to correct deficiencies identified in the sanitary survey report and failure to timely provide the viability assessment.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with section "V. Order" constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26 day of
Nov., 2008

Great River, L.C.- River Highlands Homeowners Association and River Highlands Water System Association (River Highlands Subdivision)- Water Supply Facility No. 8245303, Field Office No. 6-
Mark Heiderscheid, Legal Services - Diana Hansen, U.S. EPA- Drinking Water, II.A.1., II.B.1.